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Supreme Court, U.S.
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No. 08- 08-420

IN THE

Supreme Court of the United States

LUIS ESTRELLA,

Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NEW YORK COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a law enforcement officer's mistaken belief, based on subjective perception, that a motorist is in violation of state law is sufficient to justify a stop of a vehicle where no such legal violation has, in fact, occurred?

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- Decision of New York Supreme Court, Appellate Division, Fourth Department: 48 A.D.3d 1283, 851 N.Y.S.2d 793, 2008 N.Y. Slip Op. 01239 (2008). *See* App. 3a-9a.

- Decision and Order of New York State County Court, County of Monroe is not officially or unofficially reported and is reprinted in the Appendix. *See* App. 10a-13a.

STATEMENT OF JURISDICTION

The Order of the New York State Court of Appeals was entered on July 1, 2008. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a) to review the New York Court of Appeals decision on a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS

A. Federal Constitutional Provision

The Fourth Amendment to the United States Constitutional provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . ."

B. State Statutory Provisions

New York Vehicle and Traffic Law § 250(1) provides in pertinent part:

> Except as otherwise provided in subdivision three of this section, the provisions of this chapter relative to the registration and equipment of motor vehicles, motorcycles and trailers and the display of registration numbers shall not apply to a motor vehicle, motorcycle or trailer owned by a non-resident of this state, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to registration and equipment of such motor vehicle, motorcycle or trailer, as the case may be, and the display of registration numbers thereon, and shall conspicuously display his registration numbers as required thereby . . .

New York Vehicle and Traffic Law § 375(12-a)(b)(3) provides in pertinent part:

> (b) No person shall operate any motor vehicle upon any public highway, road or street: . . . if it is classified as a station wagon, sedan, hardtop, coupe, hatchback or convertible and any rear side window has a light transmittance of less than seventy percent;

STATEMENT OF CASE

A. Procedural History

By Indictment dated November 4, 2004, Mr. Estrella was charged with one count of Possession of a Controlled Substance in the First Degree (Penal Law § 220.21(1)) and one count of Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16(1)). In satisfaction of the Indictment, Estrella pled guilty to Criminal Possession of a Controlled Substance in the Second Degree. He was sentenced to a term of 4 years to life, and on resentencing under the changes to the Rockefeller drug law statute, the court imposed a four year determinate sentence with five years supervised release.

Mr. Estrella moved to suppress all evidence obtained as a result of the stop. He argued that the stop could not be supported by the window tint, because the New York Vehicle and Traffic tint law did not apply to the vehicle being operated by Mr. Estrella if the vehicle complied with Georgia's vehicle equipment regulations, and Georgia had no valid window tint regulation at the time of the stop. On July 21, 2005, the county court denied the suppression motion. It ruled that while Georgia's tint statute had been ruled unconstitutional and was not in effect on November 4, 2004, the date the vehicle was stopped, Rochester City Police Officer Miskell ("Miskell") nonetheless possessed a "reasonable suspicion to stop the defendant's vehicle for the tinted windows." App. 10-12.

On appeal, New York State Supreme Court, Appellate Division, Fourth Department held that the officer who stopped the vehicle had the requisite probable cause to believe that a violation of Vehicle and Traffic Law § 375(12-a)(b)(3) had occurred. The Appellate Division, Fourth Department stated that the stop itself was necessary to obtain the information whether V&T Law § 250(a) was applicable to exempt Mr. Estrella from the requirements of Vehicle and Traffic Law § 375(12-a)(b)(3). The court further held that it was unreasonable to require police officers to be familiar with the equipment requirements laws of every state in order to effectuate a proper stop for violation of New York State law. App. 5-9.

Two Justices of the Supreme Court, Appellate Division, Fourth Department dissented and voted to reverse the judgment, vacate the plea, grant that part of the motion of defendant to suppress the evidence seized from his vehicle, and dismiss the Indictment. The dissenting justices stated that New York motor vehicle equipment provisions did not apply to the vehicle being operated by Mr. Estella. Rather, the dissenting justices stated that Georgia law applied with respect to the tinted rear window, and there was no valid window tint statute in Georgia at the time of the stop. Thus, the dissenting justices determined that the police did not have probable cause to believe that Mr. Estrella had committed a traffic infraction. The dissent recognized that while it is true that the officers were unaware that Georgia's window tint statute had been declared unconstitutional, that mistake of law, as opposed to a mistake of fact, cannot justify the stop of a vehicle. The dissent also stated that it could discern no valid public

policy reason for not requiring police officers to familiarize themselves with the motor vehicle equipment laws of other states if they stop such vehicles solely on the basis of a purported equipment violation. In the dissent's view, "where a stop is predicated on a traffic infraction, police officers must be charged with the objective standard of knowing whether such an infraction occurred." App. 5-9.

On Appeal, the New York Court of Appeals held that the courts below did not err in deciding not to suppress the evidence recovered from the vehicle. The Court of Appeals stated that the record supported the findings that the officer who stopped the car reasonably believed the windows to be over-tinted in violation of V&T Law 375(12-a)(b)(3). The Court of Appeals further held that the officer was not chargeable with knowledge that tinting was legal in Georgia, where the car was registered. App. 1-2.

B. Statement Of The Facts

On November 4, 2004, Luis Estrella was pulled over after turning from Lyell Avenue onto Lake Avenue in the City of Rochester. He was driving a Mercedes-Benz with Georgia plates, and the Special Investigations Section of the Rochester City Police Department had broadcast a request over the police radio to have a tan 1987 Mercedes Benz with Georgia plates driving on Lyell Avenue pulled over. At the time of the stop of the Mercedes-Benz, the vehicle was validly registered and licensed in Georgia and the owner of the vehicle was a resident of Georgia.

There is a conflict in the record as to how the stop occurred. Miskell testified that he passed the Mercedes on Lyell and did a U-turn and followed the vehicle. He said that when he observed it make a left hand turn onto Lake Avenue, he noticed that the left rear window appeared to be excessively tinted. Miskell then activated his emergency lights and pulled the Mercedes over, he testified.

The Dispatch Radio Transmission tape tells a somewhat different story. Miskell's car number was 8905. The transcription of the stop shows that the dispatch called for a car at "Lyell and Murray" to make a traffic stop, and that two other police cars responded before Miskell. At least one reported reaching Lyell and Murray before Miskell. When car 8905 (driven by Officer Miskell) arrived, it informed the dispatcher that "Somebody's pulling over that FIF car on Lake Avenue in about a second here." Pulling over a "FIF" car in this context means a "suspicious person stop," Miskell testified.

About ten minutes after the stop, Rochester City Police Officer Durawa ("Durawa") appeared at the scene with a tint meter. He used the meter to test the tint on the left rear window, and found a light transmittance of 10%. Durawa informed Miskell that New York required a 70 percent light transmittance, and after contacting the AAA, he told Miskell that Georgia required a 32 percent light transmittance. Miskell gave Mr. Estrella tickets for "light transmittance less than 32 percent Georgia and unlicensed to operate."

Miskell was told by SIS to keep Mr. Estrella at the scene so that a canine unit could arrive. Rochester City Police Officer Waterman responded with the drug detection dog "Griz," who alerted on the vehicle. A search warrant was later obtained for the Mercedes-Benz. According to the government records, 176 ounces of cocaine was recovered in the search of the vehicle.

Mr. Estrella was indicted on one count of Possession of a Controlled Substance in the First Degree (Penal Law § 220.21(1)) and one count of Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16(1)). In satisfaction of the Indictment, Estrella pled guilty to Criminal Possession of a Controlled Substance in the Second Degree. He was sentenced to a term of 4 years to life, and on resentencing under the changes to the Rockefeller drug law statute, the court imposed a four year determinate sentence with five years supervised release.

REASONS FOR GRANTING THE PETITION

POINT I

THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE DECISION OF THE NEW YORK COURT OF APPEALS IS IN DIRECT CONFLICT WITH DECISIONS FROM THE FIFTH, SEVENTH, NINTH, TENTH AND ELEVENTH CIRCUITS—ALL OF WHICH HOLD THAT A LAW ENFORCEMENT OFFICER'S MISTAKEN BELIEF THAT A MOTORIST IS IN VIOLATION OF STATE LAW IS *INSUFFICIENT TO JUSTIFY A STOP OF A VEHICLE*

The Court should grant certiorari because the decision of the New York Court of Appeals is in direct conflict with the decisions from the Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits of the United States Courts of Appeals. Prior law from these Circuit Courts of Appeals has held that a law enforcement officer's mistaken belief that a motorist is in violation of state law is *insufficient* to justify a stop of a vehicle, even if the mistake is reasonable and in good faith. The New York Court of Appeals' decision in this case is irreconcilable with the law from these Circuit Courts of Appeals in that an officer's mistake of law may not be used to support a traffic stop. In this case, the New York Court of Appeals stated that an officer was not chargeable with knowledge that the window tinting was legal in Georgia, thereby enabling the officer to reasonably believe the windows to be over-tinted in violation of V&T Law 375(12-a)(b)(3), despite his mistaken belief of the law.

In an analogous case to the case at bar, the Ninth Circuit held in *U.S. v. Lopez-Soto,* 205 F.3d 1101, 1106 (9th Cir. 2000), that a police officer violated the Fourth Amendment in stopping a motorist based on a mistaken belief that the absence of a vehicle registration sticker visible from the rear violated a Baja, Mexico vehicle code. In *Lopez-Soto,* a San Diego police officer while driving behind and to the left of Lopez-Soto's vehicle noticed that the car displayed a license plate from Baja, Mexico. The officer had been mistakenly instructed at the police academy that Baja, Mexico required motorists to affix registration stickers in such manner to be visible from the rear of the vehicle. The applicable Baja, Mexico code, however, directs that the sticker be displayed on the windshield. California law requires foreign vehicles traveling on state roadways to be properly registered in their home jurisdiction. When the officer did not see a registration sticker from the rear, the officer stopped the vehicle. It was ultimately determined that the officer stopped Lopez-Soto because he held a mistaken view of the law. The Ninth Circuit stated:

> the traffic stop in the case before us was not objectively grounded in the governing law. What officer Hill reasonably suspected, namely that Lopez-Soto had not affixed a registration sticker to his rear window, simply was not a violation of Baja [, Mexico] law. This cannot justify the stop under the Fourth Amendment . . . We have no doubt that Officer Hill held his mistaken belief of the law in good faith, but there is no good-faith exception to the exclusionary rule for police who do not act in accordance with governing law . . . To create

> an exception here would defeat the purpose of the exclusionary rule, for it would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey. *Id* at 1106.

The Fifth Circuit held in *United States v. Lopez-Valdez*, 178 F.3d 282, 289 (5th Cir. 1999), that a police officer's stop of a vehicle based on his mistaken belief that a taillight was in violation of Texas law violated the Fourth Amendment. The Fifth Circuit said:

> ... if officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive.

The Fifth Circuit's logic is unassailable. The Fourth Amendment requires that the Government not be able to stop vehicles at random, simply because the law enforcement official feels like doing so. The Fourth Amendment does permit, however, stops which are objectively reasonable. Without objectivity as the determining standard for the reasonableness, there is no effective check on government intrusion. If stops may occur because the law enforcement officer believed the law to be X, even though the law is not X, courts are necessarily left with probing what was in the mind of the law enforcement officer. To prevent precisely this amorphous and vast expansion of the power of law enforcement to stop vehicles, the stop must be based

on whether the law was in fact violated, because any other standard requires probing what was in the mind of the law enforcement officer. Because an exercise of probing what was in the mind of the law enforcement officer is virtually boundless, the failure to require that a violation in fact has occurred is to present precisely the issues faced by this Court in *Delaware v. Prouse*, 440 U.S. 648 (1979), which the Court described as "the unbridled discretion of law enforcement officials." *Prouse*, 440 U.S. at 661. There, the Court said probable cause for a stop was required. Of course the underlying premise of probable cause is the actual commission of an offense.

This Court took an even stronger position on the irrelevance of "subjective intentions" of a law enforcement officer in *Whren v. United States*, 517 U.S. 806 (1996). In that case, petitioners wanted the Fourth Amendment to require the law enforcement officer to act reasonably in making a stop. Justice Scalia, writing for a unanimous Court, said "[s]ubjective intentions play no role in ordinary, probable cause Fourth Amendment analysis." *Id.* at 813. The Court, in arriving at its holding, said:

> For the run-of-the-mine case, which this surely is, we think there is no realistic alternative to the traditional common-law rule that probable cause justifies a search and seizure. Here the District Court found that officers had probable cause to believe that petitioners had violated the traffic code. That rendered the stop reasonable under the Fourth Amendment, the evidence thereby discovered admissible, and

> the upholding of the conviction of the Court of Appeals for the District of Columbia Circuit correct. The Judgment is *Affirmed. Id* at 819.

In Mr. Estrella's case, we most assuredly have a "the run-of-the-mine" case. The only basis for the stop is a window tint violation.[1] However, the window tint clearly did not give probable cause for the stop because Georgia had no tint law at the time of the stop, and under the New York Vehicle and Traffic law, it is the Georgia tint regulation that controlled. Thus, there was no violation justifying the stop.

New York Vehicle & Traffic Law § 375 (12-a)(b)(3) makes it illegal to operate any vehicle in New York with windows having a light transmittance of less than 70 percent. However, Vehicle & Traffic Law § 250(1) states the following in pertinent part:

> the provisions of this chapter relative to . . . the equipment of motor vehicles . . . shall not

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[1] The record contains no support for the trial court's alternative finding that Miskell was "justified in stopping the vehicle based on the information supplied to him by the narcotics unit." While it is true that under the fellow officer rule, one policeman's stop may be permissible if directed by another officer in possession of facts establishing a reasonable suspicion, the People are still required to establish what facts the requesting officer had to support the seizure. The People produced no evidence at the suppression hearing to meet this burden. Miskell testified only that he began to follow the Mercedes because it was requested by SIS. The People produced no evidence identifying the narcotics officer who requested the stop, and it provided no evidence of any information that the requesting officer might have had to justify the stop. Thus, there is no evidence to support the alternative ground for the trial court's denial of the suppression motion.

> apply to a motor vehicle . . . owned by a non-resident of this state, provided that the owner shall have complied with the provisions of the law of the . . . state . . . of his residence relative to the registration and equipment of such motor vehicle."
>
> . . .
>
> the provisions of the subchapter shall be operative to a motor vehicle . . . only to the extent that under the laws of the . . . state of his residence like exemptions and privileges are granted to motor vehicles . . . duly registered under the laws of any owned by residents of this state.

See also People v. Nettleton, 57 Misc.2d 854, 855 (J.C. Village of Herkimer 1968) (provided that the owner thereof complied with the provisions of the law of the state of his residence relative to the equipment of such motor vehicle, the vehicle is exempt from New York's equipment laws pursuant to V&T Law § 250(1)). Although the Vehicle & Traffic law does not define the term "equipment," the regulation regarding light transmittance for car windows is in a section entitled "Equipment." Vehicle & Traffic Law § 375. There can be little doubt that the windows with which a motor vehicle is equipped is "equipment" for purposes of the statute. In addition, there is no question in this case that the car was validly licensed and registered in Georgia, and that the owner resided in Georgia. The condition that like exemptions and privileges be granted to vehicles duly registered under the laws of and owned

by residents of New York is also satisfied. *See* Ga. Code Ann. §§ 40-2-90 & 40-2-91.

Thus, the only question is whether the tint of the windows complied with Georgia law. Georgia's tint regulations were codified at Ga. Code Ann. § 40-8-73.1(b) (2004). However, this statute was declared unconstitutional by the Georgia Supreme Court on June 7, 2004, by *Ciak v. State*, 597 S.E.2d 392, 395 (Ga. 2004), and a new tint statute was not enacted by Georgia until May 2, 2005. *See* 2005 Ga. Laws 67 (repealing and reenacting Ga. Code Ann. § 40-8-73.1). Therefore, at the time that the vehicle being operated by Mr. Estrella was stopped, Georgia had no valid tint law. The Mercedes was thus not in violation of any Georgia equipment law, including window tint, and therefore it was exempted from complying with New York's tint law under Vehicle & Traffic Law § 250(1). There being no probable cause for the stop of the vehicle being operated by Mr. Estrella, the evidence should have been suppressed and the conviction reversed.

In *United States v. Granado*, 302 F.3d 421, 424 (5th Cir. 2002), the Fifth Circuit held an officer's mistaken belief that a license plate violated Texas law did not justify the stop of the vehicle, and that the violation of the Fourth Amendment was "unmistakable."

In *United States v. Tibbits*, 396 F.3d 1132, 1138 (10th Cir. 2002), the Tenth Circuit held that failure to understand the law by the very person charged with enforcing it is not objectively reasonable.

In *United States v. Miller*, 146 F.3d 274 (5th Cir. 1998), the Fifth Circuit, noting that a vehicle flashing of a turn signal without turning or changing lanes was not a violation of Texas law, held a stop by the officer who thought such conduct was a violation of law, was contrary to the requirements of the Fourth Amendment. The court of appeals stated:

> The rule articulated by the Supreme Court in *Whren* provides law enforcement officers broad leeway to conduct searches and seizures regardless of whether their subjective intent corresponds to the legal justification for their actions. [footnote omitted]. But the flip side of that leeway is that the legal justification must be objectively grounded. [citation omitted]. Here, given that having a turn signal on is not a violation of Texas law, no objective basis for probable cause justified the stop of Miller. *Id.* at 279.

In *United States v. King*, 244 F.3d 736 (9th Cir. 2001), the Ninth Circuit reversed a denial of a motion to suppress where the officer thought there was a violation of the traffic laws concerning the rear view mirror. The court of appeals stated:

> Even a good faith mistake of law by an officer cannot form the basis for reasonable suspicion, because "there is no good-faith exception to the exclusionary rule for police who do not act in accordance with governing law." (citation omitted). 244 F.3d at 739.

The Ninth Circuit noted that the officers "acted reasonably and his interpretation of the traffic law was reasonable, he was nonetheless mistaken in his belief that King's conduct violated the law." *Id.* at 741. Therefore, "[b]ecause an officer's mistake of law cannot form the basis for reasonable suspicion to initiate a traffic stop, we reverse the district court's denial of King's motion to suppress." *Id.* at 741-742. The King case cites numerous other cases where the Ninth Circuit has reached the same result, on the same reasoning.

In *United States v. McDonald*, 453 F.3d 958, 962 (7th Cir. 2006), the Seventh Circuit reversed a denial of a motion to suppress and held that a police officer's mistake of law cannot support probable cause to conduct a stop even though the officer genuinely believed the defendant had violated the law when he did not turn after engaging his signal. The court of appeals stated:

> We agree with the majority of circuits to have considered the issue that a police officer's mistake of law cannot support probable cause to conduct a stop. Probable cause only exists when an officer has a "reasonable" belief that a law has been broken. Law enforcement officials have a certain degree of leeway to conduct searches and seizures, but "the flip side of that leeway is that the legal justification must be objectively grounded." An officer cannot have a reasonable belief that a violation of the law occurred when the acts to which an officer points as supporting probable cause are not prohibited by law.

> It makes no difference that an officer holds an understandable or "good faith" belief that a law has been broken. Whether the officer's conduct was reasonable under the circumstances is not the proper inquiry. *See* Rather, "the correct question is whether a mistake of law, no matter how reasonable or understandable, can provide the objectively reasonable grounds for providing reasonable suspicion or probable cause." *Id.* The answer is that it cannot. A stop based on a subjective belief that a law has been broken, when no violation actually occurred, is not objectively reasonable. *Id.* at 961-962.

In *United States v. Chanthasouxat*, 342 F.3d 1271, 1278-79 (11 Cir. 2003), the Eleventh Circuit reversed a denial of a motion to suppress and held that an officer's mistaken belief that the lack of an interior rearview mirror violated state law did not provide grounds for reasonable suspicion or probable cause to justify the traffic stop even though the officer had written over 100 tickets for the violation, was trained that it was the law, and was told by a magistrate that the lack of a rear mirror violated the law. The court of appeal stated:

> We also agree with the Fifth Circuit, *Lopez-Valdez*, 178 F.3d at 289, and the Ninth Circuit, *Lopez-Soto*, 205 F.3d at 1106, that the good faith exception to the exclusionary rule established by *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed. 2d 677 (1998) should not be extended to excuse a vehicular search based on an officer's mistake of law. The Ninth Circuit explained that

> there is no good-faith exception to the exclusionary rule for police who do not act in accordance with governing law. To create an exception here would defeat the purpose of the exclusionary rule, for it would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey. *Chanthasouxat*, 342 F.3d. at 1280.

In *U.S. v. Twilley*, 222 F.3d 1092 (9th Cir. 2000), a California police officer stopped a car with a single Michigan license plate, which the officer believed to be a violation of Michigan and California law. California law required cars to display "every license plate issued by this State or any other jurisdiction within . . . the United States." *Id.* at 1094. The arresting officer believed that Michigan issued two plates. While the arresting officer did not know Michigan law, he was aware that an awful lot of states issued two plates and assumed this was the case in Michigan as well. *See Id.* As it turned out, however, the officer was mistaken; Michigan does not require two plates. *See Id.* The court of appeals held that the stop violated the Fourth Amendment, noting that "a belief based on a mistaken understanding of the law cannot constitute the reasonable suspicion required for a constitutional traffic stop." *Id.* at 1096. The Court also rejected the government's argument that the officer's belief that two license plates were required was objectively reasonable. The court reiterated the well developed doctrine that there is no good-faith exception to the exclusionary rule for police who do not act in accordance with governing law. *See Id.*

The principle at issue in this case is perhaps best stated by the court in *United States v. Chanthasouxat*, wherein the court opined that "[w]e also note the fundamental unfairness of holding citizens to 'the traditional rule that ignorance of the law is no excuse,' . . . while allowing those entrusted to enforce the law to be ignorant of it." 216 F.3d at 1280. The New York Court of Appeals in their decision in this case has made this fundamental unfairness the controlling law in New York. As a result of the Court of Appeals' Decision in this case, New York does not require an actual violation of the law to justify a stop of a vehicle, and those entrusted with enforcing the law are permitted to be ignorant of the law outside of New York. It is because of this rationale, that the New York Court of Appeals affirmed the lower court decisions.

It is anticipated that Respondents will contend that certiorari should not be granted because (1) it is unreasonable to require that police officers be familiar with the equipment requirement laws of every state and (2) the stop itself was necessary to obtain the information whether Section 250(1) was applicable.

With respect to whether it is reasonable for the police to be familiar with the laws they are enforcing, a number of cases have addressed this concern and found it unpersuasive. Courts have noted that to grant an exception to the police would reward police ignorance, and would "remove the incentive for police to make certain that they properly understand the law they are entrusted to enforce and obey." *United States v. McDonald*, 453 F.3d at 962 (7th Cir. 2006), quoting *United States v. Lopez-Soto*, 205 F.3d 1101 (9th Cir. 2000). Courts

have also opined that the "[f]ailure to understand the law by the very person charged with enforcing it is not objectively reasonable." *United States v. Tibbetts*, 396 F.3d 1132, 1138 (10th Cir. 2005).

With respect to the contention that the "stop itself was necessary to obtain the information whether Section 250(1) was applicable", this is answered most succinctly by *United States v. Herrera*, 444 F.3d 1238 (10th Cir. 2006). There, a Kansas regulatory scheme authorized random inspections of trucks with "a manufacturer's weight rating over 10,001 pounds". The police pulled over Mr. Herrera's truck, which weighed 10,000 pounds, contending that they needed to do so *to determine* whether the regulatory scheme applied. The Court held that the police need reasonable suspicion to stop the vehicle. The court opined that the police cannot stop a vehicle to ascertain whether they have reasonable suspicion. Accordingly, any argument that Officer Miskell's stop of the vehicle was justified in order ascertain whether V&T § 250(1) was applicable to exempt the vehicle from the requirements of V&T § 375(12-a)(b)(3) must fail.

POINT II

THE TRAFFIC STOP AT ISSUE IS UNCONSTITUTIONAL AND CONTRARY TO PUBLIC POLICY IN THAT IT WOULD ALLOW NEW YORK POLICE OFFICERS UNFETTERED DISCRETION TO *INDISCRIMINATELY STOP OUT-OF-STATE VEHICLES*

The Fourth Amendment imposes upon all law enforcement personnel a constitutional obligation to act reasonably in order to avoid unnecessary intrusions upon the privacy rights of ordinary citizens. *See Delaware v. Prouse*, 440 U.S. at 653-54. In this case, the Constitution requires that the government demonstrate the officer in question had probable cause to stop the vehicle for a traffic violation. *Whren*, 517 U.S. at 810. It has not done so. Officer Miskell lacked probable cause to believe that the vehicle in question, bearing a Georgia license plate, was in violation of New York law. If this traffic stop were to be sanctioned by this Court, the police in New York would be free to stop thousands of out-of-state vehicles simply because the foreign state's vehicle requirements are not identical to those of New York State. That, appellant submits, is not reasonable.

Under the Fourth Amendment, Miskell was required to possess facts or circumstances sufficient to warrant a prudent person to believe that the suspect has committed a traffic violation. *Michigan v. De Fillippo*, 443 U.S. 31, 37 (1979). Here the required facts and circumstances are lacking. Indeed, there was no traffic violation and Miskell himself testified that he

did not know the percent light transmittance permitted under Georgia law at the time of the stop. Effecting a seizure on the basis of what New York law might have required of a foreign registered and licensed vehicle traveling in New York state is patently arbitrary. Miskell had no objectively reasonable basis to believe that a traffic violation had occurred. *See Delaware v. Prouse*, 440 U.S. at 653-54.

The traffic stop in this case was not based on an observed set of facts or circumstances which would lead a prudent officer to believe a traffic violation had been committed. *See U.S. v. Greene*, 783 F.2d 1365, 1367 (9th Cir. 1986). Miskell did not know the light transmittance required under Georgia law or whether the Georgia vehicle was exempt from New York law if it complied with the equipment laws where the vehicle was registered. The Officer's generalized knowledge of New York law was no reason to stop an out-of-state registered and plated vehicle that was not in any violation of the equipment laws of the State where is was registered.

Of course, Miskell could have taken the matter out of the realm of speculation and interjected an element of objectivity merely by communicating with headquarters to verify whether New York's equipment law applied to an out-of-state vehicle with Georgia plates. He chose not to act is a reasonable manner.

In addition, sound considerations of public policy dictate that law enforcement personnel cannot be allowed to conduct traffic stops based upon facts and circumstances as occurred in this case. Here, there was

no actual violation and no knowledge as to whether the vehicle was exempt from New York law if the vehicle complied with the equipment laws where the vehicle was registered. Sanctioning the traffic stop of the vehicle in this case would mean that law enforcement personnel are free to stop many of thousands of out-of-state vehicles without any particularized knowledge that a violation has actually occurred. Essentially, law enforcement officials in New York will be able to indiscriminately stop any out-of-state vehicle simply because the foreign state vehicle requirements are not identical to those of New York.

For example, as seen in *People v. Twilley*, 222 F.3d 1092 (9th Cir. 2000), vehicles registered in Michigan are required to display one license plate. Under the Court of Appeals decision in this case, any Michigan registered vehicle that ventures into New York (where two plates are required by V&T Law § 402) is subject to stop at any time, so long as the officer is willing to plead ignorance of the law.

If law enforcement personnel were free to initiate stops on this basis, the probable cause requirement, at least with respect to out-of-state vehicles, would be rendered nugatory. Police will be free to stop and detain drivers and passengers of out-of-state vehicles at will, so long as foreign state vehicle requirements are not identical to those of New York. This is in direct contrast to a central purpose of the Fourth Amendment – to impose a standard of reasonableness upon the discretion exercised by law enforcement personnel. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978).

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the New York Court of Appeals.

Respectfully submitted,

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APPENDIX

APPENDIX A — MEMORANDUM OF THE COURT OF APPEALS OF THE STATE OF NEW YORK DECIDED JULY 1, 2008

STATE OF NEW YORK
COURT OF APPEALS

The People &c.,

Respondent,

v.

Luis Estrella,

Appellant.

City of Rochester,

Respondent.

MEMORANDUM

The order of the Appellate Division should be affirmed.

The courts below did not err in declining to suppress the cocaine recovered from the defendant's car. The record supports the finding that the officer who stopped the car reasonably believed the windows to be over-tinted in violation of Vehicle and Traffic Law § 375 (12-a) (b)(3). The officer was not chargeable with knowledge that the tinting was legal in Georgia, where the car was registered.

Defendant's other contentions also lack merit.

Appendix A

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided July 1, 2008

APPENDIX B — MEMORANDUM AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT ENTERED FEBRUARY 8, 2008

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1152
KA 07-01064

PRESENT: SCUDDER, P.J., GORSKI, LUNN, PERADOTTO, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

LUIS ESTRELLA, DEFENDANT-APPELLANT.

CITY OF ROCHESTER, RESPONDENT.

MEMORANDUM AND ORDER

It is hereby ORDERED that the judgment so appealed from is affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of criminal possession of a controlled substance in the second degree (Penal Law § 220.18[1]). Contrary to the

contention of defendant, County Court properly refused to suppress evidence seized from his vehicle. The evidence at the suppression hearing established that a police officer received a radio transmission that police "needed a Mercedes Benz stopped on Lyell Avenue." Upon observing a Mercedes Benz traveling on Lyell Avenue with a rear window that appeared to be heavily tinted, the officer stopped the vehicle. Another officer responded with a tint meter to test the window tint and determined that the level of light transmittance in the rear window was 10%. Vehicle and Traffic Law § 375 (12-a) (b)(4) provides in relevant part that "[n]o person shall operate any motor vehicle upon any public highway, road or street . . . the rear window of which is . . . treated with any material which has a light transmittance of less than seventy percent." The vehicle had Georgia license plates and defendant, who failed to present a valid driver's license, informed the officers that he resided in Georgia. The officers then obtained information from the American Automobile Association to the effect that, pursuant to a Georgia statute, the window was required to have light transmittance of 32% (*see* § 250[1]). Defendant correctly contends that, several months before the officers stopped his vehicle, the Supreme Court of Georgia had held that the statute was unconstitutional (*Ciak v. State*, 278 Ga. 27, 28-29, 597 S.E.2d 392, 394).

We cannot agree with the dissent that the officer who stopped defendant's vehicle knew at the time of the stop that "defendant's vehicle was registered in Georgia and that defendant was a Georgia resident" and

thus that, pursuant to Vehicle and Traffic Law § 250(1), defendant was exempt from the requirements of section 375 (12-a) (b)(4). Section 250(1) provides in relevant part that the owner of a vehicle that is in compliance with the registration and equipment requirements of the state in which the owner resides is exempt from provisions of the Vehicle and Traffic Law pertaining to registration and equipment. The exemption is applicable, however, only if the state in which the owner resides grants "like exemptions" to residents of New York State (*id.*). The record of the suppression hearing establishes that, at the time of the stop, the officer did not know whether defendant was the owner of the vehicle, whether the vehicle was properly registered in Georgia, or whether the light transmittance complied with Georgia law (*see id.*). Rather, the officer knew only that the vehicle was operated on a public highway with a rear window that appeared to be tinted with a material having a light transmittance of less than 70%. We therefore conclude that the officer who stopped the vehicle had the requisite probable cause to believe that a violation of Vehicle and Traffic Law § 375 (12-a) (b)(4) had occurred (*see People v. Robinson*, 97 N.Y.2d 341, 349-350, 741 N.Y.S.2d 147, 767 N.E.2d 638; *People v. McKane*, 267 A.D.2d 253, 700 N.Y.S.2d 40, *lv. denied* 94 N.Y.2d 921, 922, 708 N.Y.S.2d 361, 362, 729 N.E.2d 1160, 1161). The stop itself was necessary to obtain the information whether section 250(1) was applicable and thus whether defendant was exempt from the requirements of section 375 (12-a) (b)(4). Also contrary to the view of the dissent, it is unreasonable to require that police officers be familiar with the equipment

requirement laws of every state, and presumably other countries, in order to effectuate a proper stop for a violation of New York State law.

Contrary to the further contention of defendant, the use of a narcotics-detection dog to sniff the exterior of the vehicle during the lawful stop of his vehicle did not violate his constitutional right to be protected from unlawful search and seizure (*see Illinois v. Caballes*, 543 U.S. 405, 409, 125 S.Ct. 834, 160 L.Ed.2d 842; *People v. Willette*, 42 A.D.3d 674, 675, 839 N.Y.S.2d 597, *lv. denied* 9 N.Y.3d 883, 842 N.Y.S.2d 795, 874 N.E.2d 762). Furthermore, upon obtaining a positive indication from the dog that drugs were present in the vehicle, the police thereafter properly obtained a search warrant (*see People v. Leon*, 23 A.D.3d 1110, 804 N.Y.S.2d 220, *lv. denied* 6 N.Y.3d 755, 810 N.Y.S.2d 423, 843 N.E.2d 1163). We conclude that the court properly denied the request of defendant for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 challenging the veracity of the affidavit in support of the search warrant application. Although the affiant stated that the dog was a certified narcotics-detection dog when in fact the dog's certification had expired approximately one month before the search and the dog was not recertified until approximately two weeks after the search, we nevertheless conclude on the record before us that defendant failed to establish the need for a *Franks* hearing, to show that the affiant "deliberately falsified allegations to demonstrate probable cause" (*Franks*, 438 U.S. at 168, 98 S.Ct. 2674; *see People v. Cohen*, 90 N.Y.2d 632, 637-638, 665 N.Y.S.2d

30, 687 N.E.2d 1313). We have reviewed defendant's remaining contention and conclude that it is without merit.

All concur except LUNN and GREEN, JJ., who dissent and vote to reverse in accordance with the following Memorandum: We respectfully dissent because we cannot agree with the majority that County Court properly refused to suppress evidence seized from defendant's vehicle. It is by now well established that a police officer may lawfully stop a motor vehicle where the officer has "probable cause to believe that the driver of [the motor vehicle] has committed a traffic violation" (*People v. Robinson*, 97 N.Y.2d 341, 349, 741 N.Y.S.2d 147, 767 N.E.2d 638), and we agree with the majority that the police may lawfully stop a vehicle for the traffic infraction of excessively tinted windows (*see People v. McGriff*, 219 A.D.2d 829, 830, 631 N.Y.S.2d 969). New York motor vehicle equipment provisions, however, do not apply to motor vehicles owned by nonresidents of New York, provided that the owner is in compliance with the equipment provisions of the law of the state of his or her residence (*see* Vehicle and Traffic Law § 250[1]). Here, the police officer who stopped defendant's vehicle knew only that defendant's vehicle was registered in Georgia and that defendant was a Georgia resident. Thus, Georgia law applied with respect to the tinted rear window on defendant's vehicle, and there was no window tint law in effect when defendant's vehicle was stopped. The window tint statute in Georgia had been declared unconstitutional by the Supreme Court of Georgia (*see Ciak v. State*, 278 Ga. 27, 28-29, 597 S.E.2d 392, 394)

several months before the defendant's vehicle was stopped, and a new window tint statute was not enacted in Georgia until nearly a year after the prior statute was declared unconstitutional (*see* Ga. L. 2005, Act 67). Thus, contrary to the view of the majority, we conclude that the police did not have probable cause to believe that defendant had committed a traffic infraction. While it is true that the officers were unaware that Georgia's window tint statute had been declared unconstitutional, that mistake of law, as opposed to a mistake of fact, cannot justify the stop of a vehicle and the ensuing search and subsequent seizure of evidence therefrom (*see People v. Smith*, 1 A.D.3d 965, 767 N.Y.S.2d 327; *Matter of Byer v. Jackson*, 241 A.D.2d 943, 944-945, 661 N.Y.S.2d 336). Further, we discern no valid public policy reason for not requiring police officers to familiarize themselves with the motor vehicle equipment laws of other states if they stop such vehicles solely on the basis of a purported equipment violation. Motor vehicle stops constitute "at least a limited seizure subject to constitutional limitations" (*People v. John BB.*, 56 N.Y.2d 482, 487, 453 N.Y.S.2d 158, 438 N.E.2d 864, *cert. denied* 459 U.S. 1010, 103 S.Ct. 365, 74 L.Ed.2d 400) and, in our view, where a stop is predicated on a traffic infraction, police officers must be charged with the objective standard of knowing whether such an infraction occurred (*see generally Robinson*, 97 N.Y.2d at 349-350, 741 N.Y.S.2d 147, 767 N.E.2d 638). Here, defendant's purported window tint violation cannot justify the stop of defendant's motor vehicle.

Appendix B

Inasmuch as there is no legal justification for the stop of defendant's vehicle, we would reverse the judgment, vacate the plea of guilty, grant that part of the motion of defendant to suppress evidence seized from his vehicle, dismiss the indictment and remit the matter to County Court for proceedings pursuant to CPL 470.45.

Entered: February 8, 2008

JoAnn M. Wahl
Clerk of the Court

APPENDIX C — DECISION AND ORDER OF THE NEW YORK STATE COUNTY COURT, COUNTY OF MONROE DATED JULY 21, 2005

STATE OF NEW YORK

COUNTY COURT COUNTY OF MONROE

Ind. No. 2004-1001

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

LUIS ESTRELLA

DECISION & ORDER

Connell, J.

The defendant, claiming to be aggrieved by an unlawful or improper acquisition of evidence, has moved to suppress a statement made by him on November 4, 2004 to members of the Rochester Police Department and Immigration and Customs and Enforcement Bureau on the ground that it was involuntarily made within the meaning of CPL § 60.45. A confession or admission is admissible at trial in New York State only if its voluntariness is established by the People beyond a reasonable doubt (*People v. Yarter*, 41 NY2d 830, cert. denied, 433 US 910; *People v. Valerius*, 31 NY2d 51).

The defendant, claiming to be aggrieved by an unlawful search and seizure, has also moved to suppress

physical evidence seized by members of the Rochester Police Department on November 4, 2004. A pre-trial suppression hearing was conducted before me on these issues on May 26, 2005.

FINDINGS OF FACT

On November 4, 2004 Rochester Police Officer Kevin Miskell received a request from the narcotics unit of the police department to stop the defendant's Mercedes-Benz car in the area of Lyell Avenue and Murray Street in the City of Rochester. Officer Miskell followed the car northbound to Lake Avenue and noticed what he believed to be excessive tinting of the windows, which would be in violation of New York State law. Officer Miskell pulled the car over, and when he approached the defendant, who was driving the car and asked for his license, registration and insurance card, the defendant produced an expired Mexican driver's license. The defendant indicated that he had been residing in Atlanta, Georgia for the last three months. He also indicated that he had been in the United States for the past three years, but did not have his "green card" with him and further indicated that the car belonged to someone by the name of "Orlando".

Based on his own observations of the car, Officer Miskell requested that an officer respond with a tint meter. Officer Durawa responded with that device and tested the windows of the car and found them to be excessively tinted in violation of New York State law and Georgia law.

Appendix C

Special Agent Jose Garcia from the Immigration and Customs and Enforcement Bureau was also asked to respond based on the responses of the defendant. He met with the defendant at the Public Safety Building in an interview room. The defendant originally indicated to him that he was an illegal alien who had crossed over the border from Mexico. Agent Garcia then advised the defendant of his *Miranda* warnings by reading verbatim from People's Exhibit 1A, which was received in evidence. The defendant indicated that he understood those warnings and agreed to speak with the agent at approximately 11:15 a.m. No threats or promises were made to the defendant to induce him to speak with the investigator. The conversation with the defendant lasted approximately one hour. Ultimately, the defendant changed his story by giving a different date of birth to the agent and indicating that he was not Mexican, but Dominican.

CONCLUSIONS OF LAW

While the vehicle windows in this case appeared to have violated both New York and Georgia law as written in statute, George's law regarding tinted windows was found to be unconstitutional on June 7, 2004. Consequently, Georgia had no prohibition on tinted windows as of November 11, 2004, the date of the stop. However, Officer Miskell possessed reasonable suspicion to stop the defendant's vehicle for the tinted windows (*People v. Osbourne*, 158 A.D.2d 740). Officer Miskell was also justified in stopping the vehicle based on the information supplied to him by the narcotics unit (*People*

v. Bianchi, 85 NY2d 1022; *People v. Pitt*, 110 A.D.2d 723). The defendant's failure to produce a valid license allowed the police to detain him while proper identification could be confirmed (*People v. Vasquez*, 106 AD2d 327).

The detention of the defendant was proper based on the above facts. The pedigree questions posed by Special Agent Garcia were also proper. Once inconsistencies were demonstrated by the defendant's version of how he arrived at this country, Agent Garcia properly advised the defendant of his *Miranda* warnings. The defendant made a knowing, voluntary, and intelligent waiver of those warnings before speaking further with the investigator. There was nothing coercive about the way in which the statements were obtained.

Accordingly, the defendant's motions to suppress the items seized from the defendant as well as the statements attributed to him are in all respects denied.

Signed this 21st day of July, 2005 at Rochester, New York.

s/ John J. Connell
JOHN J. CONNELL
County Court Judge